Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of	)	
	)	
Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands	)	IB Docket Nos. 05-220 and 05-221
	)	
	)	
Inmarsat Global Limited Petition for Declaratory Ruling to Provide Mobile Satellite Service to the United States Using the 2 GHz and Extended Ku-Bands	)	File Nos. SAT-PPL-20050926-00184 SAT-PDR-20050926-00184 SAT-AMD-20051116-00221

CONSOLIDATED PETITION FOR RECONSIDERATION OF INMARSAT VENTURES LIMITED AND INMARSAT GLOBAL LIMITED

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Pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, Inmarsat Ventures Limited and Inmarsat Global Limited (together, "Inmarsat") respectfully request reconsideration of the *Orders* of the Commission and the International Bureau issued in the above captioned proceedings.[2] One order awards the entire 2 GHz MSS band to two entities, TMI and ICO. The other order dismisses Inmarsat's request for a reservation of 2 GHz MSS spectrum so that Inmarsat could deploy a competitive MSS system to serve the U.S. Inmarsat is filing a consolidated petition for reconsideration because these two *Orders* are interrelated. Namely, the outcome of the *Inmarsat PDR Order* was determined by the outcome of the *2 GHz*

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[1] The Commission's Order dismissing the application of Inmarsat Global Limited included the above-captioned "PDR" file number, although the file number originally assigned was the "PPL" file number also included in the caption above. Out of an abundance of caution, this pleading references, and is being submitted in the records for, both file numbers.

[2] *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, IB Docket Nos. 05-220 and 05-221, FCC 05-204 (rel. Dec. 9, 2005) ("*2 GHz Order*"); *Inmarsat Global Limited, Petition for Declaratory Ruling to Provide Mobile Satellite Service to the United States Using the 2 GHz and Extended Ku-Bands*, File Nos. SAT-PPL-20050926-00184 and SAT-AMD-20051116-00221, DA 05-3170 (rel. Dec. 9, 2005) ("*Inmarsat PDR Order*") (collectively, the "*Orders*").

Order. Thus, to the extent the Commission reconsiders its decision in the 2 GHz Order, the International Bureau should reconsider its decision in the *Inmarsat PDR Order.*

I. INTRODUCTION AND SUMMARY

Inmarsat urges the Commission to reconsider its award of additional 2 GHz spectrum to TMI and ICO, and reinstate Inmarsat's Petition for Declaratory Ruling to allow the provision of a competitive 2 GHz MSS alternative to the U.S.

The 2 GHz band is a vital future resource for MSS systems. Inmarsat therefore applauds the Commission for retaining the MSS designation for the entirety of the 2 GHz band. Inmarsat respectfully submits, however, that the decision to award the entire band to TMI and ICO is neither supported by the record nor adequately justified, and that all alternative proposals for licensing the available 2 GHz spectrum were not adequately considered and addressed.

Specifically, the following three flawed and unsubstantiated assumptions appear to underlie the determination that the public interest would be better served by assigning the entirety of the 2 GHz band to TMI and ICO, rather than by allowing other satellite providers to develop competitive 2 GHz MSS alternatives: (i) satellite operators in other MSS bands do not need access to 2 GHz because they can provide all of the services possible at 2 GHz in other bands, (ii) TMI should have access to more 2 GHz spectrum because it does not hold any other MSS interests, and (iii) the award of all of the additional 2 GHz spectrum to TMI and ICO will produce public safety and rural broadband benefits that otherwise would not exist.

As to the first point, the Commission simply has not considered that the "greenfield" that is 2 GHz provides MSS business opportunities that are not possible in other MSS bands. As a result, the Commission prematurely and mistakenly has concluded that licensing the entire 2 GHz band to TMI and ICO does not create an undesirable duopoly. As to the second point, the Commission unfortunately has failed to take into account that TMI today

operates an L-Band MSS system, and, combined with its affiliates, now holds approximately 46 *MHz of MSS spectrum — almost twice as much as anyone else. As to the third point, there is* nothing in the record that suggests that TMI and ICO are better situated than any other MSS operator to deliver public safety or rural broadband benefits through a 2 GHz system, or that awarding them *all* of the additional spectrum would improve their ability to deliver those benefits.

Moreover, the *2 GHz Order* should be reconsidered because the Commission has not, as it must, addressed all alternative proposals offered in the record that would serve the public interest better than awarding the entirety of the 2 GHz band to two entities. Specifically, the Commission should consider all of the alternatives proposed by Inmarsat,[3] and adopt one of them, rather than grant TMI and ICO a duopoly in the 2 GHz band before either entity has even neared completion of its 2 GHz system. Namely, the Commission could:

(i) award one-third of the 2 GHz band to each of ICO and TMI, but then also promptly authorize a third entity in the remaining one-third of the band;

(ii) retain the 2 GHz band for MSS, but not award additional spectrum to TMI or ICO at this time, and hold an expedited proceeding focused on the best way to authorize the available spectrum, including possibly awarding additional spectrum to TMI and ICO when they actually implement their systems; or

(iii) accommodate more than three licensees in the band, and expeditiously authorize those additional licensees through a market-based licensing mechanism than provides an incentive to commence service to the public as early as possible.

Each of these proposals could be accomplished in a expeditious manner that ensures the benefits of 2 GHz MSS, including the public safety benefits, would be brought to the American public in a timely fashion. For example, the Commission could authorize additional licensees in the band through a "race to space" whereby spectrum would be awarded once an

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[3] *See, e.g.,* Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221, at 9-10 (filed Nov. 16, 2005).

entity had actually launches a 2 GHz satellite and therefore is in a position to commence 2 GHz MSS service to the American public. Alternatively, and consistent with past precedent, the Commission could have granted Inmarsat's request for market access outside of a "processing round," and thereby allowed Inmarsat to immediately commence its plans to launch a 2 GHz MSS system by the end of the decade.

None of these alternative proposals that the Commission expressly solicited was given the serious consideration that the law requires. Instead, the Commission summarily awarded the entire 2 GHz band to two entities who do not have an established track record, based on reasoning that does not withstand scrutiny.

II. THE BASES FOR AWARDING THE ENTIRE 2 GHZ BAND TO TMI AND ICO ARE UNSUBSTANTIATED

In its *2 GHz Order*, the Commission found that the public interest would be better served by assigning the entirety of the 2 GHz Band to TMI and ICO, rather than by allowing other satellite providers the opportunity to offer competitive 2 GHz MSS alternatives.[4] In particular, the Commission determined, based on competition, public safety and rural broadband considerations, that giving the entire band to TMI and ICO serves the public interest "more than it does allowing other existing providers to expand their existing services."[5] As demonstrated below, the Commission's decision to assign the entirety of the 2 GHz band to TMI and ICO and to foreclose opportunities for additional competition in the band is unsubstantiated and is contradicted by its reasoning elsewhere in the *2 GHz Order*, and by the record in the

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[4] *2 GHz Order* at ¶ 56.

[5] *Id.*

proceeding. Therefore, the decision to award all of the additional spectrum to TMI and ICO is not sustainable and should be reconsidered.[6]

A. The Commission's Competition Analysis Did Not Address the Unique Nature of the 2 GHz Band

The Commission, in summary fashion, determined that "ICO's and TMI's 2 GHz MSS offerings will compete in the same product market as the offerings of licensees in other MSS bands" and, therefore, the Commission "disagree[d] that reassigning the 2 GHz MSS spectrum to TMI and ICO results in a duopoly."[7] In making this finding, however, the Commission simply did not address the converse---whether providers in other MSS bands will be able to compete with the MSS offerings possible at 2 GHz.

The Commission also did not address Inmarsat's arguments that: (i) the nascent 2 GHz band is unique among MSS bands because it supports the provision of broadband MSS offerings that cannot readily be provided in other bands; and (ii) the policies articulated in the DIRECTV/EchoStar Hearing Designation Order[8] therefore require a serious examination and substantiation of the public interest issues presented by licensing only two entities at 2 GHz.[9] Thus, the Commission wrongly concluded that licensing only two MSS providers at 2 GHz would not result in an MSS duopoly in that band.

These problems with the *2 GHz Order* are significant. As Inmarsat has explained, and as the Commission has acknowledged in other contexts, courts have generally condemned

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[6] *MCI Telecommunications Corp. v. FCC*, 842 F.2d 1296, 1305-06 (D.C. Cir. 1988) (remanding an FCC decision as "confused, conclusory, and uncompelling," because of its failure to gather and consider relevant information and its reliance on unsupported assumptions).

[7] *2 GHz Order* at ¶ 33; *see also id.* at n.164.

[8] *EchoStar Communications Corporation*, 17 FCC Rcd 20559 (2002).

[9] *See, e.g.,* Reply Comments of Inmarsat Ventures Limited, IB Docket No. 05-221, at 14-22 (filed Aug. 15, 2005).

mergers to duopoly, particularly in cases, as here, where barriers to entry are high.[10] This is so because the creation of such a duopoly creates both the opportunity and the incentive for both firms to coordinate to increase prices, and therefore raises the possibility that consumers will not receive the service quality and low prices that result from healthy competition.[11]

In its August 15 Reply Comments and in a September 28, 2005 ex parte letter, Inmarsat provided eight pages of analysis regarding the unique capability of the "greenfield" that is 2 GHz to support the provision of broadband and multimedia services capabilities that do not exist in other MSS bands. The unique features of the 2 GHz band that Inmarsat identified include the following: (i) the band was internationally designated for the development of IMT-2000 compatible 3G terrestrial and satellite services, with the expectation that doing so would enable the mass-market development of integrated and interoperable hybrid terrestrial/satellite equipment and services; (ii) 2 GHz supports the use of wider-bandwidth channels than other bands and greater ability to develop new and innovative services; and (iii) the complete lack of congestion in the band (there are no satellite systems operating today in the part of the 2 GHz band at issue) allows new services to develop without the constraints imposed by hundreds of thousands of existing users and dozens of satellites who operate in other MSS bands.[12]

Thus, Inmarsat demonstrated that 2 GHz is *unique* among MSS bands in its ability to support high-data-rate, next-generation multimedia and broadband MSS offerings over mobile handheld devices, including in rural areas that may otherwise be unserved or underserved. The

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[10] Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221, at 5 (filed Nov. 16, 2005) (citing *See FTC v. H.J. Heinz Co. and Milnot Holding Corp.*, 246 F.3d 708, 724 n.23, 725 (D.C. Cir. 2001); *see also id.* at 724 n.23 ("supracompetitive pricing at monopolistic levels is a danger in a market with only two competitors").

[11] *Id.*

[12] *Id.*

Commission correctly acknowledged that 2 GHz MSS systems would be able to compete with existing and forthcoming MSS offerings in other bands, but it simply failed to consider the converse----whether MSS providers in other bands would be able to compete fully with the 2 GHz MSS offerings of TMI and ICO. For the reasons Inmarsat has articulated, MSS providers in other bands cannot be expected to fully compete with all forthcoming 2 GHz MSS offerings. Thus, the award of the entire 2 GHz band to two entities results in a duopoly, and Commission competition policy warrants licensing at least one more initial competitor in the nascent band.

B. The Commission Failed to Consider that TMI is an MSS Incumbent with Considerable MSS Spectrum Holdings

In its competition analysis, the Commission concluded that assigning the entire 2 GHz Band to TMI and ICO would provide each of them "the inputs needed to enable them to become strong MSS competitors,"[13] and that they needed 10 MHz of spectrum in each direction to be "roughly comparable" with their MSS competitors. Thus, the Commission declined to allow "other existing services providers" access to the 2 GHz band "to expand their existing services."[14] The notion that TMI is not an "existing MSS service provider," and does not already have extensive spectrum resources, is simply incorrect.

As the Commission is well aware, TMI has been an MSS operator for over a decade. TMI is the Canadian licensee of an L-Band MSS satellite network currently operating at 106.5° W.L., and therefore has the right to those portions of the L-Band that have been coordinated by the Canadian administration under the Mexico City MoU.[15] Moreover, TMI has entered into a venture with Motient creating a combined Canadian-American regional MSS

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[13] *2 GHz Order* at ¶ 56.

[14] *Id.*

[15] *See generally SatCom Systems, Inc., et al.,* 14 FCC Rcd 20798 (1999) (market access decision by which TMI's L-Band MSS spacecraft was authorized to serve the U.S.).

service, utilizing the capacity on TMI's Canadian-licensed L-band satellite, as well as the U.S. L-Band satellite now licensed to MSV.[16] That venture already has access to approximately 13 MHz of L-Band spectrum in each direction.[17] Thus, TMI is an incumbent MSS operator who has access to the L-Band on its own accord, as well as through its interest in the MSV joint venture.

Moreover, TMI's 2 GHz business is being acquired by Motient Corporation. Currently pending before the Commission is a proposed assignment of TMI's 2 GHz authorization to TerreStar, an entity that is majority owned and controlled by Motient.[18] Motient plans to acquire affirmative control of MSV (which it does not have today), and also to acquire ownership of all of MSV and TerreStar that it does not now own (other than minority positions to be retained by TMI).[19]

Thus, there is no question that the award to TMI of 2 x 10 MHz of 2 GHz spectrum increases the MSS spectrum holdings of an existing MSS service provider, regardless whether Motient acquires TMI's 2 GHz authorization. Moreover, upon consummation of Motient's acquisition of the TMI 2 GHz authorization, Motient will have access to almost twice

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[16] *See Motient Services Inc. and TMI Communications and Company, LP, Assignors and Mobile Satellite Ventures Subsidiary LLC, Assignee*, 16 FCC Rcd 20469, 20469-71 (2001).

[17] Letter from John P. Janka to Marlene H. Dortch, IB Docket Nos. 05-220 and 05-221, at 2, n.1 & Exhibit 1 (filed Nov. 16, 2005).

[18] *See* Application of TMI Communications and Company, L.P. to assign its 2 GHz MSS LOI authorization to TerreStar Networks, SAT-ASG-20021211-00238; *see also TMI Communications and Company, Limited Partnership and TerreStar Networks, Inc. Application for Review and Request for Stay*, 19 FCC Rcd 12603 (2004) (reinstating this application following the reinstatement of TMI's 2 GHz authorization).

[19] *See* News Release, *Motient Announces Transaction with Owners of Mobile Satellite Ventures and TerreStar Network: Restructuring and Simplification of Ownership Structure to Provide MSV and TerreStar Enhanced Access to Capital and Strategic Partners* (Sep. 22, 2005) (available at http://phx.corporate-ir.net/phoenix.zhtml?c=110135&p=irol-newsArticle&ID=760114&highlight=, last viewed January 9, 2006) cited in Letter from John P. Janka to Marlene H. Dortch, IB Docket Nos. 05-220 and 05-221, at 1 (filed Sep. 28, 2005); *see also* Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221 (filed Nov. 16, 2005).

as much MSS spectrum in North America as any other company--a total of 46 MHz.[20] The *2 GHz Order* inexplicably ignores this evidence.

For these reasons, the Commission's conclusion that assigning more 2 GHz spectrum to TMI will facilitate entry by a new MSS provider, and will allow TMI to "compete more effectively" with other MSS competitors, is not only wrong but also is contradicted by the record in this proceeding.

C. The Public Safety and Rural Broadband Benefits Identified in the *2 GHz Order* Are Not Unique to TMI or ICO

The Commission proffered two additional public interest benefits of increasing TMI's and ICO's 2 GHz MSS spectrum assignments: (1) public safety; and (2) rural broadband. While it is clear that public safety and rural broadband policies could be advanced by the deployment of almost any MSS system, nothing in the record supports a conclusion that awarding all of the 2 GHz spectrum to TMI and ICO would advance these goals better than authorizing one or more further competitive 2 GHz MSS systems.

In analyzing the public safety benefits of its decision, the Commission aptly explained that satellite technology generally provides invaluable capabilities to first responders in situations where terrestrial services may be unavailable.[21] But there is *no* analysis in the *2 GHz Order,* nor any demonstration in the record, how increasing TMI's and ICO spectrum assignments 250 percent would benefit first responders. The Commission expressly disregarded evidence submitted by TMI in support of its request for more spectrum that Inmarsat and others disputed: that TMI needed additional spectrum to deploy ATC, take full advantage of the power on its spacecraft, achieve economies of scale in handset production, or use state-of-the-art-air

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[20] Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221, at 2 (Filed Nov. 16, 2005)

[21] *Id.* ¶ 28.

interfaces.[22] Instead, the Commission's justification that TMI and ICO need more spectrum to provide public safety benefits is entirely based on brief and virtually identical submissions of certain public safety agencies that (i) tout the very important benefits of MSS, and (ii) mention (usually in passing, if at all) their support of assigning the band to TMI and ICO, but provide no rationale or data to support dividing the band between just two providers. But nothing in those letters explains why assigning the *entire* 2 GHz band – 2 x 10 MHz each – to TMI and ICO is necessary to enable those entities to provide public safety-related services that they could not provide with smaller 2 GHz spectrum assignments. Indeed, the Commission does not address why one of the options on which it requested comment would not be adequate to meet public safety needs, namely the option of increasing the two incumbents' assignments to 6.67 MHz in each direction.[23]

Nor does the *2 GHz Order's* reliance on potential E911 benefits withstand scrutiny. The *2 GHz Order* cites as an "independent and additional justification for reassigning 10 megahertz of spectrum in each direction to ICO and TMI" the expectation that MSS providers who include an ATC component "will work toward providing basic and enhanced 911 features."[24] Putting aside that neither TMI nor ICO has sought ATC authority, the fact remains that this justification has nothing whatsoever to do with TMI or ICO *per se*, and would apply equally to any other 2 GHz MSS proponent, including Inmarsat and Globalstar.

Moreover, the ultimate conclusion of the public safety analysis in the *2 GHz Order* is flatly contradicted by two other findings in the *2 GHz Order*. In its public safety

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[22] *Id.* nn.76 & 116.

[23] *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, Public Notice, IB Docket No. 05-221, 20 FCC Rcd 12234 (2005).

[24] *2 GHz Order* at ¶ 28 & n.76.

analysis, the Commission concludes that "assigning this spectrum to TMI and ICO will enable them to bring it into use more quickly, and so they can offer public safety services more quickly than would be possible if the spectrum were assigned to another party."[25] Yet later in the *2 GHz Order*, the Commission expressly finds that the increased speed of deployment expected from an award to TMI and ICO would not outweigh giving new entrants an opportunity to enter the market.[26] This conclusion, which undercuts the key basis for awarding additional spectrum to TMI and ICO, is particularly noteworthy given that the Commission also disregarded (i) evidence that the 2 GHz band supports MSS services not possible in other bands, and (ii) the harms of licensing to duopoly at 2 GHz. Thus, the Commission's public safety justification for increasing TMI's and ICO's assignments is wholly unsubstantiated.

Inmarsat fully agrees with the Commission's conclusion that the 2 GHz band is vital to serving the interests of the public safety community. Indeed, providing this community with the innovative services and competitive pricing that additional entrants would bring was one of the reasons why Inmarsat filed its application to provide service in this band. But the issue is not whether public safety services can be provided in this band – the issue is whether it was necessary to grant TMI and ICO a duopoly assignment of 2 x 10 MHz each in this band to provide these offerings, or whether smaller assignments, combined with the many benefits of additional competitive entry, would have better served those interests.

The *2 GHz Order* also looks to rural broadband as a basis for assigning TMI and ICO a full 10 MHz in both directions. After stating the potential benefits of satellite services generally to rural areas, the Commission concludes that "increasing ICO's and TMI's spectrum

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[25] *Id.* ¶ 28.

[26] *Id.* ¶ 57 n.173.

reservations would increase their capacity to provide broadband services in rural areas."[27] But nowhere does the Commission as much as consider whether TMI and ICO otherwise would have inadequate capacity to serve rural areas with less than 2 x 10 MHz, nor does it explain how their ability to serve rural areas would be improved, other than the tautology that more spectrum provides more capacity. In contrast, the Commission expressly declined to consider contentions that awarding additional spectrum to TMI and ICO was needed to achieve other "efficiencies."[28]

Thus, the public interest benefits cited as justifications for awarding additional spectrum to TMI and ICO are not substantiated.

III. THE COMMISSION DID NOT CONSIDER ALL OF THE ALTERNATIVE SOLUTIONS PROPOSED ON THE RECORD

The Commission specifically sought comment on alternatives to reassigning the entire 2 GHz band to TMI and ICO.[29] In its pleadings, and in various *ex parte* submissions, Inmarsat proposed various alternatives that would advance the public interest more than licensing only two entities in the nascent 2 GHz band, including:

(i) adopting the Commission's proposal to award one-third of the 2 GHz band to each of ICO and TMI, but then also promptly authorizing a third entity in the remaining one-third of the band;

(ii) retaining the 2 GHz band for MSS, not awarding any additional spectrum to TMI or ICO at this time, and holding an expedited proceeding focused on determining the best way to authorize the available spectrum, including possibly awarding additional spectrum to TMI and ICO when they actually implement their systems; or

(iii) accommodating more than three licensees in the band, and expeditiously authorizing those additional licensees through a market-based licensing

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[27] *Id.* ¶ 31.

[28] *Id.* n.116.

[29] *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, Public Notice, IB Docket No. 05-221, 20 FCC Rcd 12234 (2005).

mechanism than provides an incentive to commence service to the public as early as possible.[30]

Any of these proposals would have produced a better result than awarding the entire 2 GHz band to only two entities, each of whom remains years away from implementing its 2 GHz system. And each of these proposals could be accomplished in a manner that ensures that the benefits of 2 GHz MSS, including the public safety benefits, are brought to the American public in a timely fashion. The Commission's failure to address these alternatives is sufficient reason for reconsideration.[31]

Inmarsat's proposal to authorize one or more additional licensees in the band could have been expeditiously accomplished by alternative means: (i) licensing through a "race to space" whereby spectrum would be made available to the first entities to actually launch a 2 GHz MSS satellite, or (ii) consistent with past precedent, granting Inmarsat's request for market access outside a "processing round," and thereby allowing Inmarsat to immediately commence its plans to launch a 2 GHz MSS system by the end of the decade.

Inmarsat explained that there would be no harm from its proposal to retain the returned 2 GHz spectrum for MSS and determine how best to assign it at a later date, because TMI had represented that its 2 GHz spacecraft was well under construction, TMI had raised

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[30] *See* Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221 (filed Nov. 16, 2005); Letter from John P. Janka to Marlene H. Dortch, IB Docket Nos. 05-220 and 05-221 (filed Sep. 28, 2005); Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221 (filed Oct. 27, 2005); Letter from John P. Janka to Marlene H. Dortch, IB Docket Nos. 05-220 and 05-221 (filed Aug. 24, 2005); Letters from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221 (filed Dec. 6, 2005).

[31] *City of Brookings Municipal Telephone Co. v. FCC*, 822 F.2d 1153, 1170 (D.C. Cir. 1987) ("The Commission fell into the forbidden zone of arbitrary and capricious conduct in failing even to consider the proposed alternative."); *National Black Media Coalition v. FCC*, 775 F.2d 342, 357 (D.C. Cir. 1985) (Commission's failure to consider options was flaw in agency decisionmaking).

substantial capital and was spending billions of dollars based on a 2 x 4 MHz authorization, and there was no question that TMI would deploy its system in accordance with its existing milestones.[32] Thus, Inmarsat urged the Commission to consider an award of additional spectrum to TMI and ICO only after they had actually implemented their systems.

Nor did the Commission give serious consideration to Inmarsat's proposal to accommodate additional MSS competitors at 2 GHz by determining the optimal number of 2 GHz MSS competitors, and dividing the band evenly among them. The Commission stated that such an approach would require an "inherently subjective" determination of the minimum amount of 2 GHz spectrum that would be adequate, and therefore was not consistent with Commission policy.[33] The Commission similarly stated that it would not "attempt to quantify either TMI's or ICO's individual spectrum needs."[34] However, as discussed above, the Commission concluded that TMI and ICO each needs 2 x 10 MHz to provide public safety benefits, with no justification for why this particular amount of spectrum is needed to provide these benefits. The *Order* does not attempt to reconcile (i) the summary rejection of a proposal to facilitate MSS competition, based on the Commission's desire to avoid an "inherently subjective" analysis, with (ii) the entirely subjective (and unsubstantiated) determination that increasing TMI's and ICO's spectrum assignments to 2 x 10 MHz was necessary to ensure their ability to provide public safety services.

It also bears noting that the text of the *2 GHz Order* suggests that the Commission failed to consider volumes of material that were submitted after the formal pleading cycle closed

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[32] *See* Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221, at 3 (Filed Nov. 16, 2005).

[33] *2 GHz Order* at ¶¶ 59-60.

[34] *Id.* ¶ 42.

on August 15, 2006, including dozens of pages of ex parte submissions from Inmarsat alone, which address a number of the issues discussed above.[35] In two places, the *2 GHz Order* identifies the record that formed the basis for the decision: (i) the text of the decision states that "the record in this proceeding is comprised of" the comments and reply comments filed in the formal pleading cycles in IB Docket Nos. 05-220 and 05-221 "together with the letters filed by interested parties prior to the release of the public notices,"[36] and (ii) the Appendix to the *2 GHz Order* delineates those same documents, but then selectively lists as "included in the record" only nine *ex parte* letters submitted after the pleading cycle closed, but none of Inmarsat's four substantive *ex* parte submissions.

The Commission is obligated to address all serious alternative proposals that purport to serve the public interest, which the *2 GHz Order* did not do.[37] Moreover, the Commission may not selectively include certain submissions in the record, while inexplicably excluding others, particularly when those other submissions contain evidence that undercuts the

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[35] Letter from John P. Janka to Marlene H. Dortch, IB Docket Nos. 05-220 and 05-221, at 1 (filed Sep. 28, 2005); Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221, at 1 (filed Oct. 27, 2005); Letter from John P. Janka to Marlene H. Dortch, SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221, at 1 (filed Nov. 16, 2005).

[36] *2 GHz Order* at ¶ 5.

[37] *Flagstaff Broadcasting Foundation v. FCC*, 979 F.2d 1566, 1570 (D.C. Cir. 1992) (remanding to the Commission to consider alternative proposal purporting to better serve the public interest than current Commission practice); *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 746 FN 36 (D.C. Cir. 1986) ("The failure of an agency to consider obvious alternatives has led uniformly to reversal."); *City of Brookings Municipal Telephone Co. v. FCC*, 822 F.2d at 1170.

analysis in the decision, and make proposals for alternative resolutions.[38] Both of these failures are independent grounds for reconsideration

IV. RECONSIDERATION OF INMARSAT'S MARKET ACCESS APPLICATION IS WARRANTED

To the extent Commission revisits its determination to award the entire 2 GHz band to TMI and ICO, the Bureau should revisit its dismissal of Inmarsat's Petition for Declaratory Ruling to provide 2 GHz MSS service to the U.S., using Ku band FSS feeder links. In its decision, the Bureau stated that its sole reason for dismissing the Petition was the Commission's "comprehensive ruling on the matter of returned spectrum" in IB Docket Nos. 05-220 and 05-221,[39] *i.e.*, the fact that there does not appear to be any 2 GHz spectrum currently available to Inmarsat. For the reasons set forth above, however, the bases for awarding the entirety of the 2 GHz band to TMI and ICO are unsound, and there are compelling reasons to accommodate at least one additional competitor in the band. Inmarsat wishes to be that additional competitor.

To the extent that the Commission reconsiders its decision to license to duopoly at 2 GHz, the Bureau should reconsider the dismissal of Inmarsat's Petition, and reinstate it *nunc pro tunc* in the satellite application processing queue. As the Commission is well aware, authorizations to use FSS feeder link frequencies are issued on a "first come, first served" basis, as established by filing priority in the Commission's satellite application processing queue. If the sole basis for dismissing Inmarsat's Petition is reconsidered, equities warrant restoring Inmarsat to its place in the processing queue that it held prior to dismissal.

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[38] *Illinois Public Telecommunications Ass'n v. FCC,* 177 F.3d 555, 564 (D.C. Cir. 1997) ("FCC's *ipse dixit* conclusion, coupled with its failure to respond to contrary arguments resting on solid data, epitomizes arbitrary and capricious decisionmaking.").

[39] *Inmarsat PDR Order* at ¶ 4.

V. CONCLUSION

For the foregoing reasons, the Commission should reconsider its *2 GHz Order* to the extent specified above, and reinstate Inmarsat's Petition for Declaratory Ruling to provide 2 GHz MSS.

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January 9, 2006

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on January 9, 2006, I caused to be served a copy of the foregoing Consolidated Petition for Reconsideration by first-class U.S. mail (unless otherwise indicated) upon the following:

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